

UNITED STATES DISTRICT COURT  
for the  
DISTRICT OF MASSACHUSETTS

PEDRO FURTADO  
Plaintiff

V.

K & R FISHING ENTERPRISES, INC.  
Defendant

04-12713 RWZ  
Civil Action

RECEIPT # \_\_\_\_\_  
No. AMOUNT \$ \_\_\_\_\_  
SUMMONS ISSUED \_\_\_\_\_  
LOCAL RULE 4.1 \_\_\_\_\_  
WAIVER FORM \_\_\_\_\_  
MCF ISSUED \_\_\_\_\_  
BY DPTY. CLK. M.P. \_\_\_\_\_  
DATE 12/28/04

PLAINTIFF'S COMPLAINT AND DEMAND FOR JURY TRIAL

Now comes the Plaintiff in the above-entitled matter and for his complaint states:

MAGISTRATE JUDGE LPC

General Factual Allegations

1. The Plaintiff, Pedro Furtado, is a resident of New Bedford, County of Bristol, Commonwealth of Massachusetts.
2. The Defendant, K & R Fishing Enterprises, Inc., is a corporation, duly organized and existing under the laws of the Commonwealth of Massachusetts.
3. On or about December 20, 2004, the Defendant, K & R Fishing Enterprises, Inc., was doing business within the Commonwealth of Massachusetts.
4. On or about December 20, 2004, the Plaintiff, Pedro Furtado, was employed by the Defendant, K & R Fishing Enterprises, Inc.
5. On or about December 20, 2004, the Plaintiff, Pedro Furtado, was employed by the Defendant, K & R Fishing Enterprises, Inc., as a seaman, and a member of the crew of the F/V NORTHERN EDGE.

①

6. On or about December 20, 2004, the Defendant, K & R Fishing Enterprises, Inc., owned the F/V NORTHERN EDGE.

7. The Defendant, K & R Fishing Enterprises, Inc., chartered the F/V NORTHERN EDGE from some other person or entity such that on or about December 20, 2004 the Defendant, K & R Fishing Enterprises, Inc. was the owner pro hac vice of the F/V NORTHERN EDGE.

8. On or about December 20, 2004, the Defendant, K & R Fishing Enterprises, Inc., operated the F/V NORTHERN EDGE.

9. On or about December 20, 2004, the Defendant, K & R Fishing Enterprises, Inc., or the Defendant's agents, servants, and/or employees, controlled the F/V NORTHERN EDGE.

10. On or about December 20, 2004, the F/V NORTHERN EDGE was in navigable waters.

11. On or about December 20, 2004, while in the in the performance of his duties in the service of the F/V NORTHERN EDGE, the Plaintiff, Pedro Furtado, sustained personal injuries.

12. Prior to and at the time he sustained the above-mentioned personal injuries, the Plaintiff, Pedro Furtado, was exercising due care.

#### **Jurisdiction**

13. This Court has subject matter jurisdiction over this matter pursuant to The Merchant Marine Act of 1920, commonly called the Jones Act, 46 U.S.C., §688 et. seq.

14. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. §1331 and 28 U.S.C. §1333.

**COUNT I**

**Pedro Furtado v. K & R Fishing Enterprises, Inc.**

**(JONES ACT NEGLIGENCE)**

15. The Plaintiff, Pedro Furtado, reiterates the allegations set forth in paragraphs 1 through 14 above.

16. The personal injuries sustained by the Plaintiff, Pedro Furtado, were not caused by any fault on his part but were caused by the negligence of the Defendant, its agents, servants and/or employees.

17. As a result of said injuries, the Plaintiff, Pedro Furtado, has suffered pain of body and anguish of mind, lost time from his usual work and pursuits, incurred medical expenses, and has sustained and will sustain other damages as will be shown at trial.

18. This cause of action is brought under the Merchant Marine Act of 1920, commonly called the Jones Act.

WHEREFORE, the Plaintiff, Pedro Furtado, demands judgment against the Defendant, K & R Fishing Enterprises, Inc., in the amount to be determined by a jury together with interest and costs.

**COUNT II**

**Pedro Furtado v. K & R Fishing Enterprises, Inc.**

**(GENERAL MARITIME LAW - UNSEAWORTHINESS)**

19. The Plaintiff, Pedro Furtado, reiterates the allegations set forth in paragraphs 1 through 14 above.

20. The personal injuries sustained by the Plaintiff, Pedro Furtado, were due to no fault of his, but were caused by the Unseaworthiness of the F/V NORTHERN EDGE.

21. As a result of said injuries, the Plaintiff, Pedro Furtado has, suffered pain of body and anguish of mind, lost time from his usual work and pursuits, incurred medical expenses, and has sustained and will sustain other damages as will be shown at trial.

22. This cause of action is brought under the General Maritime Law for Unseaworthiness and is for the same cause of action as Count I.

WHEREFORE, the Plaintiff, Pedro Furtado, demands judgment against the Defendant, K & R Fishing Enterprises, Inc., in the amount to be determined by the jury together with interest and costs.

### **COUNT III**

#### **Pedro Furtado v. K & R Fishing Enterprises, Inc.**

#### **(GENERAL MARITIME LAW - MAINTENANCE and CURE)**

23. The Plaintiff, Pedro Furtado, reiterates all of the allegations set forth in Paragraphs 1 through 14 above.

24. As a result of the personal injuries described in paragraph 11 above, the Plaintiff, Pedro Furtado, has incurred and will continue to incur expenses for his maintenance and cure.

WHEREFORE, the Plaintiff, Pedro Furtado, demands judgment against the Defendant, K & R Fishing Enterprises, Inc., in the amount to be determined by the jury, together with costs and interest.

**COUNT IV**

**Pedro Furtado vs. K & R Fishing Enterprises, Inc.**

**(GENERAL MARITIME LAW/JONES ACT - INTENTIONAL/NEGLIGENT  
FAILURE TO PROVIDE MAINTENANCE and CURE)**

25. The Plaintiff, Pedro Furtado, reiterates the allegations set forth in paragraphs 1 through 14 above.

26. As a result of the personal injuries described in paragraph 11 above, the Plaintiff, Pedro Furtado, has incurred and will continue to incur expenses for his maintenance and cure.

27. The Plaintiff, Pedro Furtado, has made demand upon the Defendant, K & R Fishing Enterprises, Inc., for the provision of maintenance and cure.

28. The Defendant, K & R Fishing Enterprises, Inc., has negligently, willfully, arbitrarily, and/or unreasonably failed to provide the Plaintiff with maintenance and cure in a timely and adequate manner.

29. As a result of the Defendant's failure to provide the Plaintiff maintenance and cure, the Plaintiff has sustained and will continue to sustain damages, including without limitation, pain of body and anguish of mind, lost time from his usual work and pursuits, medical and hospital expenses, attorneys fees, and has sustained and will sustain other damages as will be shown at trial.

WHEREFORE, the Plaintiff, Pedro Furtado, demands judgment against the Defendant, K & R Fishing Enterprises, Inc., in the amount to be determined by the jury, together with costs, interest, and reasonable attorneys fees.

PLAINTIFF DEMANDS A TRIAL BY JURY ON ALL ISSUES  
RAISED IN COUNTS, I, II, III AND IV.

Respectfully submitted for the  
the Plaintiff, Pedro Furtado,  
by his attorneys,

A handwritten signature in black ink, appearing to read "David F. Anderson", is written over a horizontal line.

Carolyn M. Latti, BBO 567394  
David F. Anderson, BBO 560994  
Latti & Anderson LLP  
30-31 Union Wharf  
Boston, MA 02109  
(617) 523-1000

Dated: December 28, 2004

UNITED STATES DISTRICT COURT  
for the  
DISTRICT OF MASSACHUSETTS

**PEDRO FURTADO**  
Plaintiff

V.

**K & R FISHING ENTERPRISES, INC.**  
Defendant

Civil Action

No.

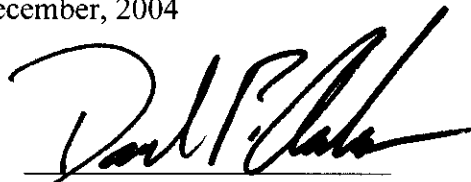
04 - 12713 RWZ

SEAMAN'S DECLARATION

The Plaintiff, Pedro Furtado, in the above entitled action is a seaman and claims the benefits of the United States Code, Title 28, Section 1916, which provides that:

"In all courts of the United States, seamen may institute and prosecute suits and appeals in their own names and for their own benefit for wages or salvage or the enforcement of laws enacted for their health or safety without prepaying fees or costs or furnishing security therefor"

Pursuant to 28 USC 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed on 28<sup>th</sup> day of December, 2004



David F. Anderson  
Latti & Anderson LLP  
30-31 Union Wharf  
Boston, MA 02109  
(617) 523-1000

JS 44 (Rev. 3/99)

**CIVIL COVER SHEET**

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THIS FORM.)

**I. (a) PLAINTIFFS**Pedro Furtado

(b) County of Residence of First Listed Plaintiff Bristol  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Carolyn M. Latt, David F. Anderson, Latt & Anderson  
LLP, 30 Union Wharf, Boston, MA 02109

**DEFENDANTS**K & R Fishing Enterprises, Inc.

County of Residence of First Listed  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE  
LAND INVOLVED.

Attorneys (If Known)  
**04-12713 RWZ**

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   |                            |                            |   |                            |                            |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
|   | PTF                        | DEF                        |   | PTF                        | DEF                        |
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input checked="" type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIW C/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party

**V. ORIGIN**

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**

(Cite the U.S. Civil Statute under which you are filing and write brief statement of cause.  
Do not cite jurisdictional statutes unless diversity.)

Jones Act 46 USC 688 et seq. & General Maritime Law.

**VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

**DEMAND'S**

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

**VIII. RELATED CASE(S) IF ANY**

(See instructions): Petition of K & R Fishing Enterprises, Inc.

JUDGE Hon. RYA ZOBEL

DOCKET NUMBER 04-cv-12699

DATE

12-28-04

SIGNATURE OF ATTORNEY OF RECORD

*[Signature]*



UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

## 1. Title of case (name of first party on each side only)

PEDRO FURTADO VS. K & R FISHING ENTERPRISES, INC.

## 2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

- I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.
- II. 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820\*, 830\*, 840\*, 850, 890, 892-894, 895, 950.
- x III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- V. 150, 152, 153.

\*Also complete AO 120 or AO 121  
for patent, trademark or copyright cases

04-12713 RWZ

## 3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

PETITION OF K & R FISHING ENTERPRISES, INC. CIVIL ACTION No. 04-cv-12699

Case assigned to: Hon. RYA ZOBEL

## 4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES ☐ NO ☒

## 5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES ☐ NO ☒

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES ☐ NO ☐

## 6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES ☐ NO ☒7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).YES ☒ NO ☐A. If yes, in which division do all of the non-governmental parties reside?Eastern Division ☒ Central Division ☐ Western Division ☐

## B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division ☐ Central Division ☐ Western Division ☐

## 8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES ☐ NO ☐

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME CAROLYN M. LATTI, DAVID F. ANDERSON  
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Boston, MA 02109  
(617) 523-1000